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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 1st May 1953

S. R. O. 832.— WHEREAS the election of Shri Karan Singh and Shri Sowaran Singh, as members of the Legislative Assembly of the State of Madhya Bharat from the Morena Constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Shri Murlidhar Singh, son of Shri Purshotam Singh, Jarah, District Morena, Madhya Bharat ;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of section 86 of the said Act for the trial of the said petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Election Commission ;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, GWALIOR, MADHYA BHARAT

ELECTION PETITION NO. 221 OF 1952.

ELECTION PETITION UNDER SECTION 81 OF THE REPRESENTATION OF THE PEOPLES ACT, 1951 (ACT XLIII OF 1951).

Murlidhar Singh son of Purshotam Singh aged 38 years, resident of Jarah, District Morena Madhya Bharat *Petitioner.*

Versus

- (1) Sowaran Singh s/o Gulab Singh, caste Thakur, resident of Morena.
- (2) Karan Singh s/o Udhe Bhan, caste Jatav, village Chhole-ki-Serai, Tehsil Morena.
- (3) Ram Gopal Bansal s/o Chuni Lal, caste Vaishya, resident of Morena.
- (4) Ram Singh s/o Ratan Singh, caste Thakar, village Bhonderi, Tehsil Morena.
- (5) Munna Lal Pancholi s/o Shiv Dyal, Advocate, Indarganj, Lashkar.
- (6) Badan Singh s/o Chitar Singh, caste Brahman, resident Morena.
- (7) Harbilas s/o Daya Pal, caste Kachhi, Village Bhansroli, Tehsil Morena.
- (8) Harbhanjan Singh s/o Mehar Singh, caste Kirar, Morena.
- (9) Raja Ram Singh s/o Khuman Singh, caste Jatav, Gwalior, District Girdhar.
- (10) Devi Ram s/o Jalim, caste Kankoli, resident of Morena.
- (11) Sumera s/o Bhola, caste Kohli, resident of Morena.
- (12) Saram Lal s/o Sewa Ram, caste Jatav, resident of Morena.

Issue No. 3.— From Chota R. W. 4's statement it is clear that he was a candidate for the election and his nomination paper Ex. A-8 was accepted by the Returning Officer. The contention of respondent No. 1 is that as Chota was a duly nominated candidate and as such he has not been made a respondent, according to section 82 of the R. P. Act, the petition must be dismissed. The question which needs decision under this issue is whether the failure of the petitioner to implead Chota is fatal to the maintainability of his election petition.

Chota survived the scrutiny under section 36 of R.P. Act but withdrew his candidature under section 37. The question which requires determination is whether Chota can be said to be a duly nominated candidate at the time of polling.

Section 82 of the R.P. Act is as follows :—

"Parties to the petition—A petitioner shall join as respondent to his petition all the candidates who were duly nominated at the election other than himself if he was so nominated."

Chapter I, part VI deals with dispute regarding elections. The definitions given in section 79 of the Act are applicable, unless the context otherwise requires, to part VI, VII, VIII of the Act. A candidate as defined in section 79 means a person who has been or claims to have been duly nominated as a candidate at an election, and any such person shall be deemed to have been a candidate as from the time when with the election in prospect, he began to hold himself out as a prospective candidate. In this connection it is to be noted that in section 82 of the Act the words used are "at the election". Now it is to be seen whether the words "at the election" are synonymous with "for the election" and that they are wide enough to include a candidate who was a candidate on the date of nomination, but ceased to be a candidate when election took place. It is very clear from the scheme of the Act that a wide definition had to be given to word "candidate" in section 79 of the Act, as the object appears to be to prevent corruption and illegal practices but it is subject to context otherwise requiring. On this part of the case section 52 of the Act is invited which deals with the procedure to be followed if a candidate dies before the poll. A candidate who has with ~~draw~~^{drawn} his candidature after giving notice of withdrawal as provided in section 37 before counter manding of the poll will be allowed to submit nomination papers again. It amounts to the position that a candidate who has withdrawn goes out of the picture and is no candidate at all.

Chapter I, part V deals with nomination of candidates. The fulfilment of conditions given in sections 30 to 34 are necessary for being a duly nominated candidate. Section 37 of the Act deals with the withdrawal of a candidature. Under section 38 the Returning Officer after the scrutiny and withdrawal have taken place, has to prepare and publish a list of valid nominations in such manner as may be prescribed. It is clear therefore that the candidate who withdraws his nomination ceases to be any kind of candidate at the election. The argument of Mr. Shiv Dayal that Chota should have been impleaded *vide* section 82 of the Act falls to the ground when the expression used in this section is seen carefully, Mr. Shiv Dayal's argument ignores the fact that the expression used by the Legislature in section 82 of the Act is not "all the candidates who were duly nominated" but "all the candidates who were duly nominated at the election." If the object of the Legislature was that all the candidates whether they have withdrawn or not, when nominations were accepted should be made parties to an election petition, it is difficult for us to understand why the expression a candidate who was duly nominated is qualified by the words "at the election". It is significant therefore that the distinction between a candidate "for the election" and a candidate "at an election" is one which cannot be ignored. The words for the election means when a candidate was holding himself as a candidate for election but after his withdrawal he cannot be said to be a candidate at the election. The words at the election have reference to the actual time when the voting takes place. We are supported in our view by an unreported decision of Chagla C. J. and Dixit Judge of the Bombay High Court in *Sita Ram Hira Chand Birla versus Bhog Raj Singh Shankar Singh* (special civil application No. 2017 of 1952) decided on 19th December 1952 and a decision of Allahabad High Court given in *Shiv Kumar Pandey and others versus V. G. Oak and others* on 19-3-53. Hence our view is that a candidate *vide* section 82 must be a person who has continued as a candidate right upto the time when the election is held and a candidate who has withdrawn his candidature in nothing more than a mere voter.

Assuming that Chota is duly nominated candidate though he has withdrawn as contended by Mr. Shiv Dayal even then his non impleading as a party to the petition is not fatal.

The gist of Mr. Shiv Dayal's (counsel for respondent No. 1) argument is that according to section 80 of the R. P. Act no election shall be called in question except by an election petition presented in accordance with the provisions of the part mentioned in that section and as the petitioner has not joined all the duly nominated candidates as respondents, the petition is not in accordance with the provisions of this Act and hence it must be dismissed. Mr. Shiv Dayal mainly relies on the judgement of the Election Tribunal at Lucknow published in the Gazette of India Extraordinary, December 1952, page 1034. The said Tribunal has taken a view that the wording of section 82 of the R. P. Act is mandatory. It makes it incumbent on the petitioner to join as respondents to his petitions all the candidates who were duly nominated at the election, and his failure to do so involves the rejection of his petition. We find ourselves unable to subscribe to this view.

Section 80 of the R. P. Act says "no election shall be called in question except by an election petition presented in accordance with the provisions of this part." The plain meaning of this section is to the effect that an election could not be challenged unless an election petition was filed. In view of the last words of section 80, *viz.*, "in accordance with the provisions of this part," it will not be logical to give a mandatory force indiscriminately to all the provisions of the act; the meaning and force of each provision will have to be found in an independent way by taking account of the whole scheme of the act.

Neither section 82 nor any other section of the R. P. Act provides the effect (penalty) of non joinder of parties. In the R. P. Act there are two sections 85 and 90 (4) which make it obligatory or discretionary to dismiss an election petition for the non-compliance of section 81, 83, 117. No such penalty is provided in the Act for non-compliance of section 82.

Section 90, sub-section 2 of the R. P. Act provides that the Tribunal shall try an election petition as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure for the trial of suits. In cases triable under the Civil Procedure Code, a distinction is made between necessary parties without whom an effective adjudication cannot be made and proper parties, who are to be joined as a matter of convenience. Order 1, Rule 9 provides that no suit shall be dismissed by reason of nonjoinder or misjoinder of parties. There is nothing in section 82 or 98 of the R. P. Act to show or suggest that an election petition must be dismissed simply because all duly nominated candidates, whether they are necessary or merely proper parties have not been impleaded is parties, hence according to section 90(2) R. P. Act the provisions of the Civil Procedure Code will be applicable.

The next point to be considered is whether a candidate who has withdrawn is a necessary party for the adjudication of the election petition. Apparently a person who withdrew from the fight and did not contest the election does not stand in the same position as candidates who not only were nominated but also contested the election. In our view, a candidate who has withdrawn his candidature has not much interest left in the election, except that he may be interested in seeing that the acceptance or rejection of the nominations of other candidates is not set aside. Section 90(1) gives an opportunity to any other candidate to be joined as a respondent. Considering these provisions of the Act, we are of opinion, that a candidate who has withdrawn his candidature is not a necessary party and as such his not being made a respondent is not fatal to the petition.

We decide this issue against the respondent.

Issue No. 4.—Murlidhar Singh petitioner has admitted in his cross examination that he was a jagirdar of Kalyani but there is nothing on record to show that jagirdari is an office of profit under the Government, hence the issue is decided against the respondent.

Issue No. 5.—No evidence is produced regarding this issue hence the issue is decided against the respondent No. 1.

Issue No. 6.—It is true that the petitioner was a candidate for the general seat and respondent No. 2 was elected for the reserved scheduled caste seat. In the petition nothing is alleged against respondent No. 2.

The wording of section 100(1) of the R. P. Act shows that under circumstances mentioned in (a) (b) (c) the election is to be declared wholly void. The question before us is whether the election, in so far as it relates to the reserved seat will also be affected by the improper rejection of the nomination paper relating to the general seat. The answer to this question depends on whether the election in double constituency, relating to the general seat and to the reserved seat was one indivisible election or whether they are two separate elections to these two seats held simultaneously merely for the purpose of convenience.

Section 63 of the R. P. Act is as follows :—

Method of Voting.—(1) In plural member constituencies other than Council Constituencies, every elector shall have as many votes as there are members to be elected, but no elector shall give more than one vote to any one candidate. (2) If an elector gives more than one vote to any one candidate, in contravention of the provisions of subsection (1) then at the time of counting of votes, no more than one of the votes by him to such candidate shall be taken into account and all the other votes given by him to such candidates shall be rejected as void.

From the wording of the above section it is clear that voters in a double member constituency are allowed two votes each with option of casting these votes for any of the candidate irrespective of the act whether he does or does not belong to the scheduled caste, the only condition being that not more than one vote can be caste in favour of one candidate. It is thus possible for each voter to use both votes for any two candidates of the same category, general or scheduled caste. In this way, it cannot be said to be beyond the bounds of possibility that the voters who have given one vote to respondent No. 2 might have given their votes to Shri Murlidhar Singh if he had been in the contest, which would have affected the votes polled by respondent No. 2 and he may not have been returned.

Under section 55 R. P. Act members of the scheduled caste are eligible to hold seats not reserved for their caste. In a double member constituency when two of the candidates of the scheduled caste top the polls they carry away both the seats. All these facts show that the election to be to the general and that to the reserved seat are not two separate elections but one indivisible election in which the candidates of the scheduled caste are also contesting for the election to the general seat. We are therefore of the opinion that in a double member constituency it is one entire divisible election and therefore the word used in section 100(1) of the R. P. Act means the election to both the seats in the constituency. It is true that respondent No. 2 who has been declared elected to the reserved seat, has to suffer for no fault of his, but that is the result of the law as it stands and we cannot help him in any way.

This view is supported by election cases Nos. 4 and 6 of 1952 published in the Gazette of India on pages 2444 of 1952 and 509 of 1953.

Issue No. 6 is decided against the respondent concerned.

ORDER

We allow the petition and declare the election from Morena Constituency to the Madhya Bharat Legislative Assembly to be wholly void. As this was a result of improper rejection of nomination paper by the Returning Officer the proper order would be to direct the parties to bear their own costs and, we therefore, order accordingly.

The 27th April, 1953.

(Sd.) V. K. DONGRE, *Chairman,*

(Sd.) BHAGWAN SWROOP, *Member.*

(Sd.) SURAJ BHAN, *Member.*

— — — — — [No. 19/221/52-Elec. III/6124.]

By Order,

P. R. KRISHNAMURTHY, *Asstt. Secy.*